

In the Matter of License No. 34783 Merchant Mariner's
Document No. Z-362068-D1
Issued to: WILLIAM R. KAMPE

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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WILLIAM R. KAMPE

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

By order dated 19 January, 1954, an Examiner of the United States Coast Guard at Mobile, Alabama, revoked License No. 34783 and Merchant Mariner's Document No. Z-362068-D1 issued to William R. Kampe upon finding him guilty of misconduct based upon six specifications alleging in substance that while serving as Second Assistant Engineer on the American SS VIRGINIA CITY VICTORY under authority of the license above described, he did:

FIRST SPECIFICATION: on or about 29 October, 1953, while said vessel was at sea, assault and batter the Chief Engineer, H. A. Goodsell.

SECOND SPECIFICATION: on or about 7 November, 1953, while ashore in the port of Manila, P.I., assault and batter the Purser, O. L. Green.

FOURTH SPECIFICATION: on or about 21 December, 1953, while said vessel was in the port of Mobile, Alabama, assault and batter the Purser.

FIFTH SPECIFICATION: on or about 21 December, 1953, while said vessel was at Mobile, assault the Chief Mate, J. F. Kahl, by striking his port hole with a fire axe in an attempt to enter his room.

SIXTH SPECIFICATION: on or about 21 December, 1953, while at Mobile, wilfully destroy ship's property by breaking a port hole light glass with a fire axe.

SEVENTH SPECIFICATION: on or about 21 December, 1953, while at Mobile, wrongfully create a disturbance by entering the Master's office without authority.

The Third Specification was withdrawn on motion of the Investigating Officer.

At the hearing, Appellant was given a full explanation of the

nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Appellant was represented by an attorney of his own selection and he entered a plea of "not guilty" to the charge and each specification except the Seventh Specification to which he entered a plea of "guilty".

Thereupon, the Investigating Officer made his opening statement and introduced in evidence two log entries as well as the testimony of the Master, the Chief Engineer, the Chief Mate, the Purser, and the Relief Mate on the early morning of 21 December, 1953.

In defense, Appellant offered in evidence the testimony of the First Assistant Engineer, the Radio Officer, and two policemen who came to the ship on 21 December. Appellant also testified under oath in his own behalf.

At the conclusion of the hearing, having given the Investigating Officer and Appellant's counsel an opportunity to submit argument as well as proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved by plea to the Seventh Specification and by proof of the other five specifications. He then entered the order revoking Appellant's License No. 34783, Merchant Mariner's Document No. Z-362068-D1 and all other licenses, certificates and documents issued to this Appellant by the United States Coast Guard or its predecessor authority.

From that order, this appeal has been taken, and it is urged that:

POINT 1. The specifications do not charge offenses which show a want of skill, negligence or failure to perform duties.

POINT 11. The Second Specification, charging an assault on a member of the crew while ashore and off duty, does not charge an offense relating to skill, care or proper discharge of duties.

POINT 111. The Fifth Specification shows on its face that it could not have been an assault on the person of the Chief Mate.

POINT IV. The finding of guilty as to the Sixth Specification is based on pure speculation.

POINT V. The findings are not supported by the evidence contained in the hearing record.

APPEARANCES: V. R. Jansen, Esquire, of Mobile, Alabama, of Counsel.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On a foreign voyage covering all of the below mentioned dates, Appellant was serving as Second Assistant Engineer on the American SS VIRGINIA CITY VICTORY and acting under authority of his License No. 34783.

During the evening of 29 October, 1953, while the ship was at sea, the Chief Engineer had an argument with Appellant in the engine room. Later, at about 2030, when the Chief Engineer was sitting in a chair on the cabin deck, Appellant approached the Chief Engineer and started another argument which terminated when Appellant struck the Chief Engineer on the head and knocked him unconscious. As a result of this blow, the Chief Engineer was still suffering a severe headache the following morning.

While the ship was at Manila on 7 November, 1953, the Purser and the Chief Engineer were sitting at the same table in a bar at Manila. Appellant went to the table where the Purser was sitting and after some exchange of words, Appellant spat on the Purser and hit him in the mouth. The Purser retaliated by striking Appellant on the head with a beer mug before they were separated after a short scuffle. The next day Appellant received treatment ashore for his wound and rejoined the ship at Yokohama several days later. The Master only permitted Appellant to return on board at the insistence of the American Consul.

The ship arrived at Mobile, Alabama, on 20 December, 1953. The Purser had just returned to his cabin at approximately 0200 the next morning, after conversing with the Relief Mate in the messroom, when Appellant and the First Assistant Engineer entered the Purser's cabin and gave him a thorough beating. The Purser managed to strike each of his attackers with a piece of brass pipe and he, in turn, was knocked to the deck by Appellant who continued to hit and kick the Purser while he was on deck. The Purser received several severe cuts on the top of his head, on his face and in his mouth. Appellant was cut on the side of his face and the First Assistant Engineer received two cuts on the top of his head. The record is not determinative as to who was the original possessor of the brass pipe or whether it was ever located at any time later.

The Relief Mate heard the Purser screaming for help and called the local police. Prior to the arrival of the police, unsuccessful attempts were made by the three participants to get the Master and the Chief Mate out of their respective cabins. At one point, somebody used a fire axe to break a port hole light glass which was outside of the Chief Mate's cabin. After the police arrived, there was a noisy disturbance just outside of the Master's quarters and Appellant was one of the participants in this incident.

The three injured men were treated at a hospital and then jailed for the balance of the night. On the next morning, Appellant and the First Assistant Engineer were fined \$100 each for disorderly conduct. The Purser was not fined.

There is no record of prior disciplinary action having been taken against Appellant during his approximately 8 years at sea.

OPINION

POINT I.

The specifications are based upon a charge of "misconduct" which is one of the reasons, stated in 46 U.S.C. 239, for which disciplinary action may be taken against a seaman's license and/or document. Therefore, there need be no showing of want of skill, negligence or failure to perform duties.

POINT II.

The fact that the assault and battery of 7 November, upon the Purser, occurred ashore is not significant since Appellant was still in the service of the ship even though he was not on board the ship at the time of the incident.

POINTS III AND IV.

These two contentions are supported by the record. Any one of several persons might have been swinging the axe which broke the port hole light glass outside of the Chief Mate's cabin. The Chief Mate admitted that he could not see the person who wielded the axe. In addition, with respect to the Fifth Specification, there was no "assault" upon the Chief Mate since his door was locked and, therefore, there was no "present ability" to commit an injury upon his person. The Fifth and Sixth Specifications are found "not proved" and are dismissed.

POINT V.

The findings are supported by the evidence as to the First, Second and Fourth Specifications; and, in part, as to the Seventh Specification.

First Specification. Although the Chief Engineer was apparently reluctant to testify against Appellant at the hearing, the Chief Engineer admitted that, on the day after he was knocked out, he told the Master that Appellant was the person who had committed the assault and battery. Later, the Chief Engineer made a similar statement to the Coast Guard Investigating Officer at Yokohama. And when the Master confronted Appellant with the charge on the day after the incident, Appellant did not deny that he was the guilty party.

Second Specification. Despite his reluctance to testify against Appellant, the Chief Engineer finally testified, in agreement with the Purser's testimony, that Appellant spit on the Purser and struck the first blow after coming over to the table where the Purser and the Chief Engineer were sitting at the bar in Manila.

Fourth Specification. Appellant was undoubtedly the aggressor when he entered the Purser's cabin at Mobile and administered a severe beating to the Purser. The Examiner, as the trier of the facts, was the best judge as to the credibility of the witnesses and he rejected the testimony, by Appellant and the First Assistant Engineer, in which they stated that the Purser had first attacked them with the brass pipe while they were in the cabin of the First Assistant Engineer.

Seventh Specification. The record discloses that this specification was proved except that the Master refused to permit Appellant to actually enter his quarters. Therefore, the specification is found "proved in part."

CONCLUSION

Despite the modification as to three of the six specifications, the order of revocation will be sustained. The three specifications found "proved" in their entirety are by far the most serious offenses alleged, especially the assault and battery upon the Chief Engineer who was Appellant's directly superior officer. The gravity of this offense is further enhanced by the fact that Appellant was an officer on the ship and, hence, required to set an example of good discipline for the unlicensed personnel in board. These three incidents of assault and battery, during the course of one voyage, show such a continued attitude of belligerence as cannot be permitted by licensed officers serving on ships of the American Merchant Marine.

ORDER

The order of the examiner dated at Mobile, Alabama, on 19 January, 1954, is AFFIRMED.

A. C. Richmond
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 13 day of July, 1954.